
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CHRISTY BORAND, and TODD
BORANDI,

Plaintiffs,

v.

USAA CASUALTY INSURANCE
COMPANY,

Defendant.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFFS'
MOTION IN LIMINE RE: ARGUMENT
OR EVIDENCE OF PLAINTIFFS'
SUPPOSED BREACH OF THE
COVENANT OF GOOD FAITH & FAIR
DEALING, OR OTHER AFFIRMATIVE
DEFENSES

Case No. 2:13-CV-141 TS

District Judge Ted Stewart

This matter is before the Court on Plaintiffs' Motion in Limine Regarding Argument or Evidence of Plaintiffs' Supposed Breach of the Covenant of Good Faith & Fair Dealing, or Other Affirmative Defenses.

In their Motion, Plaintiffs request the Court instruct Defendant, its attorneys and witnesses, not to directly or indirectly mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner any of Defendant's affirmative defenses. Plaintiffs argue that Defendant did not provide information during discovery on these defenses and did not otherwise pursue them.

In response, Defendant states that much of the evidence gained through discovery applies not only to Plaintiffs' remaining claims, but also to its affirmative defenses. Defendant argues that this evidence was properly disclosed and should be presented to the jury. The Court agrees.

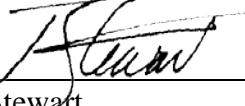
As set forth in *Beck v. Farmers Insurance Exchange*,¹ “the insured and the insurer have parallel obligations to perform the contract in good faith.”² Thus, evidence concerning whether Plaintiffs performed as required by the contract and the implied covenant is relevant and probative to the issues before the jury. The Court finds that the probative value of such evidence is not substantially outweighed by its prejudicial effect. However, the Court will not permit the use of information, witnesses, or evidence not already disclosed under Rule 26(a) at trial unless the failure to disclose was “substantially justified or is harmless.”³

It is therefore

ORDERED that Plaintiffs’ Motion in Limine Regarding Argument or Evidence of Plaintiffs’ Supposed Breach of the Covenant of Good Faith & Fair Dealing, or Other Affirmative Defenses (Docket No. 85) is DENIED.

DATED this 19th day of February, 2015.

BY THE COURT:



Ted Stewart
United States District Judge

¹ 701 P.2d 795 (Utah 1985).

² *Id.* at 801.

³ Fed. R. Civ. P. 37(c).